

Comments of Thomas R. Harmon, Director of University Police, The Pennsylvania State University, before the House Committee of Judiciary, 1 September 1999:

Thank you for the opportunity to present a few comments and observations to the Committee regarding House Bills 454, 1640 and 1666 of 1999.

Let me begin by observing I would certainly interpret existing statutes to define the use of products containing CN, CS and oleoresin capsicum, commonly known as "pepper spray", against another person as being "use of force." These substances can cause bodily injury. Therefore, the use of such products must be justified by the laws governing the use of force. Many citizens who acquire these products may not recognize and appreciate the risks and liabilities imposed by the use of chemical weapons. Those most likely to fail to recognize these risks and liabilities are juveniles. For this reason, it is important to insure that juveniles possess these weapons only with parental approval and supervision.

At Penn State, our campus weapons regulations prohibited the possession of these personal protection spray devices prior to about ten years ago. At that time, we changed the regulations to permit persons on the campus to carry these chemical weapons for personal protection. We did so because we knew that many persons, particular women students, were carrying these devices in violation of the regulation. Most of these students probably were not even aware that the possession of the spray devices was prohibited. While we do not know how many women today carry personal protection spray devices, we know from daily observations that a substantial percentage of our

women students carry them. You frequently see them being carried on key chains by women on the campus.

When we changed our policy to permit these weapons to be carried on the campus, we also had no record of their misuse that would dictate continuing the prohibition. I cannot personally recall any incidents other than use by law enforcement officers in which chemical weapons have been used on the campus. These weapons, in the hands of a responsible adult, provide a reasonably safe and effective means of self-protection from assault and may enhance feelings of personal safety.

House Bill 1640, amending Title 18 by adding Section 908.1. Use or possession of personal protection spray devices; Sub-section (b) authorizes possession of such spray devices "only if the personal protection spray device is labeled with or accompanied by clearly written instructions as to its use and the danger involved in its use." The proposed statute, however, does not appear to prohibit the mere possession of a device that is not labeled with or accompanied by such instructions nor impose any penalty. The application of this provision is thus confusing. Is a person in violation of any prohibition if the personal protection spray device he/she possesses is not labeled with or accompanied by the required instructions?

Providing instructions with such devices in their proper use, as well as first-aid instructions for the treatment of those exposed to the chemical agent, is a desirable objective. However, the provisions of Sub-section (b) appear to place the duty for such

labeling or acquiring instructions on the persons who possess the devices; not the manufacturers or retailers selling the devices. Would a law-abiding citizen purchasing a personal protection device be aware that he/she would need to insure that the device comes with the required instructions to lawfully possess the device? In my judgement, it would be more appropriate to impose the duty to provide these instructions with the product upon manufacturers and retailers. The same concern might be raised with respect to Sub-section (b) of the Section 908.1. Possession or use of electric or electronic incapacitation devices, as introduced in House Bill 1666, which appears to impose a similar duty on the possessor of the device to acquire or be in possession of instructions in order to lawfully possess the particular weapon.

The prohibition in House Bill 454 against juveniles possessing chemical weapons without written consent of a parent or guardian appears to present some questions about enforcement practices. Does this written consent have to be in the possession of the juvenile when in possession of the device? Does the written consent have to be presented to a police officer on demand? If a juvenile is found to be in possession of such a device, does a police officer have probable cause to seize the device if the juvenile cannot produce the written consent? Can a parent present the written consent after a juvenile is found to be in possession of the device? It would appear that a prosecution of a juvenile under this section would require the cooperation and testimony of a parent to prove that a juvenile either did not have or could not obtain the written consent of the parent.

With respect to the prohibition in House Bill 454 against those individuals who cannot purchase or possess a firearm from purchasing and possession personal protection devices, how would these individuals reasonably be given notice against such purchase and possession? These devices are readily available across the counter from many retailers. There is apparently no requirement that retailers provide such notice.

Finally, many of our students begin their education at Penn State while they are still 17 years of age. The requirement that those who are 17 years of age have written permission of a parent or guardian may provide some impediment to acquiring the device for some women students.